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**UNITED STATES BANKRUPTCY COURT
CENTRAL DISTRICT OF CALIFORNIA
LOS ANGELES DIVISION**

In re:

JOHN CHUN SUH and INSIL SUH,
Debtors.

Case No. 2:11-bk-35816-RK

Chapter 7

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW AFTER TRIAL
ON ORDER TO SHOW CAUSE WHY
CREDITOR BENJAMIN PARK AND HIS
ATTORNEY, JOHN H. OH, SHOULD
NOT BE HELD IN CONTEMPT FOR
VIOLATION OF THE AUTOMATIC STAY
AND DISCHARGE INJUNCTION**

This bankruptcy case came on for trial before the undersigned United States Bankruptcy Judge on August 11, 2016 on the contested matter of the order to show cause why creditor Benjamin Park and his attorney, John H. Oh, should not be held in contempt for violating the automatic stay arising in this Chapter 7 bankruptcy case and the discharge injunction entered in this case. Order to Show Cause, Electronic Case Filing No. ("ECF") 35, filed and entered on April 5, 2016. Jaenam J. Coe, of the Law Offices of Jaenam Coe, PC, appeared for Debtor John Chun Suh ("Debtor" or "Suh"). John H. Oh, of the Law Offices of John H. Oh and Associates, appeared for Creditor Benjamin Park ("Creditor" or "Park") and for himself.

1 Having considered the evidence admitted at trial, including the testimony of the
2 witnesses, the oral and written arguments of the parties, and the other papers and
3 pleadings filed in this matter, the court makes the following findings of fact and
4 conclusions of law for this contested matter pursuant to Rules 7052 and 9014 of the
5 Federal Rules of Bankruptcy Procedure and Rule 52 of the Federal Rules of Civil
6 Procedure.¹

7 **FINDINGS OF FACT**

8 1. Debtor and his spouse, Insil Suh, commenced this bankruptcy case when they jointly
9 filed a voluntary petition for relief under Chapter 7 of the Bankruptcy Code, 11
10 U.S.C., on June 15, 2011. Petition, ECF 1. Debtor's spouse, Insil Suh, the joint
11 debtor in this bankruptcy case, is not involved in this contested matter. Debtor John
12 Chun Suh's Motion for Order to Show Cause Why Benjamin Park and Should Not
13 Be Held in Contempt of Court for Violation of the Automatic Stay and Discharge
14 Injunctions, ECF 32, filed on March 21, 2016 (only Debtor John Chun Suh was listed
15 as the movant); Order to Show Cause, ECF 35. The court entered a discharge of
16 debt in this bankruptcy case on October 18, 2011. Discharge of Debtor(s), ECF 21,
17 filed and entered on October 18, 2011. This case was a "no asset" Chapter 7
18 bankruptcy case, which was closed on October 26, 2011. Order Closing Case, ECF
19 23, filed and entered on October 26, 2011; Chapter 7 Trustee's Report of No
20 Distribution, docketed on August 30, 2011.

21 2. According to Debtor, Debtor has been a pastor of financially struggling churches.
22 Declaration of John J. Suh, ¶ 3 at 1, Debtor's First-Amended Motion for an Order to
23 Show Cause Why Creditor Benjamin Park and His Attorney Should Not be Held in
24 Contempt of Court for Violation of the Automatic Stay and Discharge Injunction
25

26 ¹ Any findings of fact that should be properly characterized as conclusions of law will be
27 considered as such, and any conclusions of law that should be properly characterized as
findings of fact will be considered such.

1 (“Debtor’s First Amended Motion”), ECF 42, filed on June 1, 2016. In August 2010,
2 Debtor borrowed \$50,000 to support his church operation from Creditor Benjamin
3 Park. *Id.*

4 3. According to Debtor, the loan check came from Danny Chung, who told Debtor that
5 he managed some of Mr. Park’s assets and that Debtor should repay the loan to Mr.
6 Park. *Id.* Also, according to Debtor, the loan Debtor took was for his church’s
7 operations, but Debtor orally agreed that he would be personally responsible for the
8 loan debt. *Id.*

9 4. Debtor further testified that his personal finances suffered while trying to assist his
10 church, and thus, Debtor had to file for personal bankruptcy in 2011. *Id.*, ¶ 4.

11 5. Creditor collected payments from Debtor after the discharge was entered in this
12 bankruptcy case. *Id.* Debtor testified that he had “been giving my paychecks issued
13 to Mr. Park, and the total amount I paid after the Discharge is about \$26,500.
14 Because I was being harassed for payments, there were more checks, some of
15 which bounced, but these are the checks that have actually cleared. Copies of the
16 front and back of the payment checks to Mr. Park, which have been actually cleared
17 are annexed collectively as Exhibit 2.” *Id.*, ¶ 7 and Exhibit 2 attached thereto.

18 6. According to Debtor, Debtor “ha[s] been harassed by Mr. Park, in multitudes of
19 ways, including disparaging remarks made to me and my acquaintances, as well as
20 my congregation—all for the purposes of collecting money from me”, and “Mr. Park
21 even sent some man claiming to be a ‘collector’ to our church”. *Id.*, ¶¶ 4-5.

22 7. In his trial declaration, Debtor gave his explanation why he made payments to
23 Creditor on the loan as follows: “I have been making payments [to Mr. Park on the
24 loan] after the discharge of my bankruptcy because I did not understand that even if
25 I did not list the Loan it was discharged so long as it was a pre-petition debt.” *Id.*, ¶

26 7. Debtor further explained: “I was afraid of being sued, and have been making
27

1 payments whenever I could”, but Creditor “nonetheless sued me in the State Court.”
2 *Id.*, ¶ 6.

3 8. In his trial declaration, Debtor claimed: “Benjamin Park has been collecting
4 payments for the Loan after the discharge of my Bankruptcy, quite forcefully against
5 my will.” *Id.*, ¶ 4.

6 9. According to Debtor, “[t]hese payments, as I now understand, were illegally collected
7 from me by the creditor, through illegal collection activities, and I want them to be
8 returned to me, in addition to any reimbursement of attorney’s fees and costs.” *Id.*, ¶
9 8.

10 10. In support of his claims, Debtor has offered copies of cancelled checks payable to
11 Creditor, Benjamin Park, as evidence of the payments made on the discharged loan
12 that Creditor made to Debtor. The court received many of the copies of the
13 cancelled checks into evidence over the objection of Creditor as Creditor did not
14 dispute that Creditor received payments of the loan on behalf of Debtor and some of
15 the copies of the checks themselves show the endorsement by Creditor. However,
16 the court sustained Creditor’s objections to some of the copies of the cancelled
17 checks because Debtor did not submit complete copies of the checks, that is, some
18 of the check backs were missing, and thus, it is not clear that these checks were
19 negotiated. The cancelled checks received into evidence show that Creditor
20 collected payments in 2012 and 2013 on the prepetition loan that Creditor made to
21 Debtor in August 2010 after Debtor filed his bankruptcy case and the discharge was
22 entered in the case in October 2011. Exhibit 2 to Debtor’s First Amended Motion.

23 11. The checks representing payments on the loan to Debtor by Creditor were not drawn
24 on a bank account in Debtor’s name as Debtor stated at trial that he did not have
25 any bank account in his name, but were drawn on bank accounts in the names of
26 others, Korean American First Presbyterian Church and Bethlehem Presbyterian
27 Church, which Debtor testified were his churches, that is, the churches which

employed him as their pastor. According to Debtor, the churches issued checks to pay his loan debt owed to Creditor because the amounts on the checks were from his salary or compensation from them as their pastor. *Trial Testimony of John Chun Suh*, August 11, 2016 at 9:30-9:32 a.m. and 9:41 a.m.; Exhibit 2 to Debtor's First Amended Motion.

12. Debtor offered copies of checks showing his alleged payments of the loan made by Park to him, payable to Mr. Park (either Mr. Park, Mr. Ben Park or Mr. Park Ben) in Debtor's First Amended Motion, Exhibit 2. Declaration of John Chun Suh, ¶ 7, Debtor's First Amended Motion; *Trial Testimony of John Chun Suh*, August 11, 2016 at 9:30-9:35 a.m. These alleged payments are set forth below:

Loan Repayment

| Transaction Date/Amount | Reference |
|--------------------------------------------------|-----------------------------------------------------------------------------|
| 2/4/13 - \$1,500.00 | Bethlehem Presbyterian Church (BPC) check 2947 dated 1/25/12 |
| 3/4/13 - \$1,500.00 | BPC check 2948 dated 2/25/12 |
| 3/26/13 - \$1,500.00 | BPC check 2949 dated 3/25/12 |
| 4/1/13 - \$1,500.00 (Not Sufficient Funds (NSF)) | BPC check 2949 dated 3/25/12 |
| 5/1/13 - \$1,500.00 | BPC check 2950 dated 4/25/12 |
| 1/24/14 - \$1,000.00 (No Endorsement (NoE)) | Korean American First Presbyterian Church ("KAPC") check 1062 dated 1/10/13 |
| 2/11/14 - \$1,000.00 (NoE) | KAPC check 1063 dated 2/10/13 |
| 3/31/14 - \$1,000.00 (NSF) | KAPC check 1064 dated 3/10/13 |
| 7/10/14 - \$1,000.00 (NoE) | KAPC check 1066 dated 5/10/13 |
| 8/18/14 - \$1,000.00 (NoE) | KAPC check 1067 dated 6/10/13 |
| 8/19/14 - \$1,000.00 (NoE) | KAPC check 1068 dated 7/10/13 |

| | | |
|----|------------------------------|------------------------------------------|
| 1 | 8/19/14 - \$1,000.00 (NoE) | KAPC check 1069 dated 8/10/13 |
| 2 | 12/28/12 - \$1,500.00 | BPC check 2945 dated 11/25/12 |
| 3 | 1/16/13 - \$1,500.00 | BPC check 2946 dated 12/15/12 |
| 4 | 5/1/12 - \$1,500.00 (Exhibit | BPC check 2819 dated 4/30/12 (payable to |
| 5 | withdrawn (WD)) | Cash) |
| 6 | 8/30/12 - \$1,500.00 | BPC check 2942 dated 8/25/12 |
| 7 | 11/20/12 - \$1,500.00 | BPC check 2943 dated 9/25/12 |
| 8 | 11/20/12 - \$1,500.00 | BPC check 2944 dated 10/25/12 |
| 9 | 8/13/12 - \$1,500.00 (WD) | BPC check 2964 dated 8/10/12 (payable to |
| 10 | | Cash) |
| 11 | 11/23/12 - \$1,500.00 | BPC check 2942 dated 8/25/12 |

12 Declaration of John J. Suh, ¶ 7, Debtor's First Amended Motion and Exhibit 2 attached
13 thereto.

14 13. By the court's calculation, after an examination of copies of checks, included as
15 Exhibit 2 to Debtor's First Amended Motion, it appears that Creditor has collected a
16 total of \$13,500 in payments made on behalf of Debtor on the loan Creditor made to
17 Debtor based on checks that end in numbers 2942-2944 and 2945-2950. In its
18 calculation, the court does not include amounts from checks which have been
19 withdrawn as exhibits, checks noted as NSF, checks payable to "Cash" (which do
20 not indicate that Creditor was the payee absent other proof) and checks for which
21 there is no proof of endorsement by the payee to show that the checks were
22 negotiated and paid. This means the total repayment on the loan was \$13,500
23 based on the copies of cancelled checks in evidence.

24 14. As indicated by the bankruptcy petition and schedules filed in this case, which the
25 court takes judicial notice of pursuant to Federal Rule of Evidence 201, Debtor and
26 his joint debtor spouse did not list Creditor or the loan debt on the petition and
27

schedules. That is, Mr. Park was not listed as a creditor on the petition and schedules, nor was the debt that Debtor owed to Mr. Park for the loan listed as a debt on the petition and schedules. Petition, ECF 1; Amendment to List of Creditors, ECF 16, filed on August 30, 2011 (adding secured creditor Morgan Stanley to the list of creditors); Amended Schedules, ECF 17, filed on September 28, 2011.

15. When the discharge was entered in this bankruptcy case, Creditor was not notified of the entry of discharge because he was not listed on the bankruptcy petition and schedules as a creditor, nor was his claim listed on the petition and schedules, and thus, he was not listed on the creditors' mailing matrix to be given notice of the entry of discharge. *Id.*; Discharge of Debtor(s), ECF 21, filed and entered on October 18, 2011; Bankruptcy Noticing Center (BNC) Certificate of Notice of Discharge of Debtor(s), ECF 22, filed and entered on October 20, 2011; Mailing Matrix on Case No. 2:11-bk-35816, available through the court's Case Management and Electronic Case Filing (CM/ECF) system.

16. On August 18, 2015, Creditor commenced an action against Debtor in the Superior Court of California, County of Los Angeles, by filing a complaint for breach of oral contract, common count (money lent), claim and delivery, and negligent misrepresentation. Complaint, *Benjamin Park v. Jong Chun Suh, et al.*, No. BC 591701 (Superior Court of California, County of Los Angeles) (this lawsuit referred to herein as the "State Court Action."), Exhibit 1 to Debtor's First Amended Motion.

17. The complaint in the State Court Action was filed on behalf of Creditor by John H. Oh, of the Law Offices of John H. Oh & Associates. *Id.*

18. On September 17, 2015, Debtor by his counsel, Jaenam Coe, of the Law Offices of Jaenam Coe, PC, filed a Notice of Stay of Proceedings in the State Court Action. *Id.*, Exhibit 3. The Notice of Stay of Proceedings indicated that the reason for the stay was the automatic stay caused by a filing in another court. Attached to the Notice of Stay of Proceedings was a copy of the Discharge of Debtor in this

1 bankruptcy case, dated October 18, 2011. The proof of service of the Notice of Stay
2 of Proceedings indicated that service was made by mail on John H. Oh, Esq., Law
3 Offices of John H. Oh & Associates, on behalf of Creditor. *Id.*

4 19. Debtor admitted in his First Amended Motion for contempt that Creditor did not learn
5 of Debtor's bankruptcy case and discharge until September 17, 2015 when Debtor
6 filed the Notice of Stay of Proceedings in the State Court Action, stating: "The
7 Creditor, by filing the state court case in August, 2015, violated the discharge
8 injunction, albeit unawares of the bankruptcy discharge of the underlying debt."
9 Debtor's First Amended Motion at 6.

10 20. On or about October 15, 2015, Creditor filed an Objection to Defendant's [Debtor's]
11 Notice of Stay of Proceedings; Memorandum of Points and Authorities in Support
12 Thereof, in the State Court Action. Exhibit 4 to Debtor's First Amended Motion; *Trial*
13 *Testimony of John H. Oh*, August 11, 2016 at 10:22 a.m. In this Objection, Creditor
14 argued: "Plaintiff hereby objects to Defendant's Notice of Stay of Proceedings, on
15 the ground that the said notice doesn't apply to the case at bar, The automatic stay
16 was terminated when the Defendant was discharged in October 18, 2011 and case
17 was closed on October 25, 2011. (11 US Code § 362.)" *Id.* On December 21,
18 2015, the state court filed a Notice of Ruling re: Objection to Defendant's Stay of
19 Proceeding, stating: "The Court ruled as follows: 1. Stay is lifted. Bankruptcy filing
20 of Defendant was in 2011 and was discharged in 2011. . . ." Notice of Ruling re:
21 Objection to Defendant's Stay of Proceeding, State Court Action, Exhibit E to
22 Creditor's Notice of Opposition and Request for Hearing; Opposition to Debtor's
23 Motion to Reopen Chapter 7 Bankruptcy Case for Violation of Discharge Order and
24 for Sanctions; Declaration of John H. Oh, ECF 27, filed on February 10, 2016.

25 21. On or about January 8, 2016, John H. Oh, counsel for Creditor, filed a request for
26 entry of default against Debtor in the State Court Action. Exhibit 10 to Debtor's First
27 Amended Motion; *Trial Testimony of John H. Oh*, August 11, 2016 at 10:22-10:23

1 a.m. On or about January 28, 2016, default was entered against Debtor in the State
2 Court Action. *Id.*

3 22. On March 8, 2016, Jaenam Coe, counsel for Debtor, sent a letter by fax and mail to
4 John H. Oh, counsel for Creditor, advising that Debtor had obtained an order
5 reopening this bankruptcy case and that Debtor intended to file a motion for
6 sanctions against Creditor and his counsel unless Creditor voluntarily dismissed the
7 State Court Action on the grounds that the State Court Action violated the discharge
8 injunction and the automatic stay in the bankruptcy case. Exhibit 7 to Debtor's First
9 Amended Motion.

10 23. On March 11, 2016, John H. Oh, counsel for Creditor, sent a letter by fax and mail to
11 Jaenam Coe, counsel for Debtor, as a "meet and confer" reply letter in response to
12 the letter of counsel for Debtor requesting that Creditor voluntarily dismiss the State
13 Court Action, stating that the bankruptcy discharge did not apply to an agreement
14 made by Debtor after the discharge to repay the prepetition loan debt. Exhibit 8 to
15 Debtor's First Amended Motion.

16 24. Between March 11 and 16, 2016, Jaenam Coe, counsel for Debtor, and John H. Oh,
17 counsel for Creditor, exchanged email messages regarding Debtor's request to meet
18 and confer before Debtor filed a motion seeking sanctions for violation of the
19 discharge injunction. Exhibits 5 and 6 to Debtor's First Amended Motion. Debtor's
20 counsel requested that Creditor dismiss the State Court Action on grounds that the
21 action violated the discharge injunction in seeking to collect a prepetition debt from
22 Creditor's loan to Debtor, and Creditor's counsel disagreed on grounds that Debtor
23 had made postpetition promises to pay the loan debt, thus reaffirming the debt. *Id.*

24 **CONCLUSIONS OF LAW**

25 1. This contested matter under Rule 9014 of the Federal Rules of Bankruptcy
26 Procedure was initiated by the motion of Debtor to enforce the discharge injunction,
27 which alleges a claim for relief under 11 U.S.C. § 524(a)(2).

- 1 2. The claim is a “core proceeding” pursuant to 28 U.S.C. § 157(b)(2)(A), and this
2 court has jurisdiction over the claim pursuant to 28 U.S.C. §§ 157(b)(1) and 1334.
- 3 3. 11 U.S.C. § 727 “provides a general rule for determining when it is appropriate to
4 discharge the [individual] pre-petition debts.” *In re Biggar*, 110 F.3d 685, 687 (9th
5 Cir. 1997), *citing*, 11 U.S.C. § 727. “All of the debtor’s pre-petition debts, save
6 those listed in [11 U.S.C.] § 523, are discharged in a Chapter 7 proceeding.” *Id.*;
7 *see also*, 4 March, Ahart and Shapiro, *California Practice Guide: Bankruptcy*, ¶
8 22:830 at 22-112 (2015) (“Chapter 7 discharge relieves an individual debtor from
9 personal liability for all debts that arose before the date of the order for relief under
10 Chapter 7, except for those debts that are nondischargeable.”), *citing*, 11 U.S.C. §
11 727(b) and *In re Biggar*, *supra*. 11 U.S.C. § 523 list certain types of debts that are
12 not discharged, even if a discharge is appropriate under 11 U.S.C. § 727. *In re*
13 *Biggar*, 110 F.3d at 687, *citing*, 11 U.S.C. § 523(a).
- 14 4. The debt of Debtor for the prepetition loan made by Creditor is not one of the types
15 of debts that is nondischargeable under 11 U.S.C. § 523, including certain debts
16 which are not listed on debtor’s bankruptcy schedules under 11 U.S.C. §
17 523(a)(3)(A), because the loan debt does not involve fraud and this bankruptcy
18 case is a “no asset, no bar date” Chapter 7 case. *In re Nielsen*, 383 F.3d 922, 927
19 (9th Cir. 2004). Thus, the prepetition loan debt of Debtor to Creditor is subject to
20 discharge in this case.
- 21 5. Creditor argues that the loan debt is excepted from discharge due to Debtor’s
22 postpetition agreement to repay the debt and because Debtor made voluntary
23 postpetition payments on the debt. “Notwithstanding this prohibition against the
24 collection of discharged debts, [11 U.S.C.] § 524 provides that a debtor may repay
25 debts that would otherwise be dischargeable, either by entering into a formal
26 reaffirmation agreement, *see* 11 U.S.C. § 524(c) and (d), or by making voluntary
27

1 payments in the absence of such an agreement. See 11 U.S.C. § 524(f).” *In re*
2 *Hudson*, 168 B.R. 368, 371 (Bankr. S.D. Ill. 1994).

3 6. Creditor’s argument that Debtor made a valid postpetition agreement to reaffirm the
4 loan debt lacks merit because the only valid way to reaffirm a prepetition debt by an
5 agreement is through a reaffirmation agreement that complies with 11 U.S.C. §
6 524(c). See, e.g., *In re Motley*, 268 B.R. 237, 243 (Bankr. C.D. Cal. 2001). One of
7 the requirements of 11 U.S.C. § 524(c) is that the reaffirmation agreement has been
8 filed with the bankruptcy court no later than 60 days after the first date set for the
9 meeting of creditors under 11 U.S.C. § 341(a) unless time is extended by the court.
10 Here, there is no evidence that any reaffirmation agreement for the loan debt
11 meeting the requirements of 11 U.S.C. § 524(c) was timely filed with this court.
12 Thus, Creditor’s argument based on a postpetition agreement to reaffirm the
13 prepetition loan debt as an exception to discharge must be rejected.

14 7. However, Creditor’s alternative argument that the payments he collected on the
15 debt are excepted from discharge as voluntary payments made by Debtor under 11
16 U.S.C. § 524(f) does have merit. 11 U.S.C. § 524(f) provides: “Nothing contained in
17 subsection (c) or (d) of this section [requiring court approval of reaffirmation
18 agreements] prevents a debtor from voluntarily repaying any debt.” *In re Hudson*,
19 168 B.R. at 371, *quoting*, 11 U.S.C. § 524(f). “Congress has provided little
20 guidance on the meaning of voluntary repayment under § 524(f).” *Id.*; see also,
21 *DuBois v. Ford Motor Credit Co.*, 276 F.3d 1019, 1022-1023 (8th Cir. 2002); 4
22 Resnick and Sommer, *Collier on Bankruptcy*, ¶ 524.06 at 524-59 (16th ed. 2016).
23 As *Collier on Bankruptcy* notes, “Occasionally, courts will have to decide whether
24 payments on a discharged debt were truly voluntary. For example, if a payment is
25 made as a result of pressure or coercion, it is not made voluntarily in the sense of
26 section 524(f).” 4 Resnick and Sommer, *Collier on Bankruptcy*, ¶ 524.06 at 524-59,
27 *citing inter alia*, *Matter of Arnold*, 206 B.R. 560, 566-567 (Bankr. N.D. Ala. 1997). In

determining whether a debtor's payments of a discharged debt were voluntary within the meaning of 11 U.S.C. § 524(f), the court finds it useful to look at the totality of the circumstances regarding the repayments of the debt. See, e.g., *Matter of Arnold*, 206 B.R. at 566-567.

8. As discussed herein, the evidence of the totality of the circumstances of this matter shows that the payments were made voluntarily by Debtor. Debtor in his direct testimony received at trial in his declaration in support of Debtor's First Amended Motion contended that Creditor had been collecting payments for the loan after discharge "quite forcefully against my will" in that Creditor "constantly demanded payment and even sent some man claiming to be a 'collector' to our church" and that Creditor has harassed him, "including disparaging remarks made to me and my acquaintances, as well as my congregation – all for the purposes of collecting money from me." Declaration of John J. Suh at 1, Debtor's First Amended Motion. Creditor in his declaration in opposition to the Motion denied these allegations, but Creditor's declaration was not received into evidence at trial as he did not appear at trial. Declaration of Creditor Benjamin Park in Opposition to Debtor John Chun Suh's Declaration in Support of Why Creditor Should Not Be Held in Contempt, ECF 40, filed on May 10, 2016. The court finds that Debtor's testimony that all of the payments that he made to Creditor before the State Court Action were not voluntary is not credible. It is undisputed that Debtor borrowed a loan of \$50,000 from Creditor before Debtor filed his bankruptcy case in 2011. Debtor was thus aware of his prepetition debt to Creditor, but did not list the debt or Creditor on his bankruptcy petition and schedules filed in the bankruptcy case despite this knowledge and his legal duty as a bankruptcy debtor to file accurate and complete bankruptcy schedules listing all assets, debts and creditors. 11 U.S.C. § 521(a)(1)(B) (stating that the debtor must file a schedule of assets and liabilities "unless the court orders otherwise"); Federal Rule of Bankruptcy Procedure 1008

1 (“All petitions, lists, schedules, statements and amendments thereto shall be
2 verified or contain an unsworn declaration [under penalty of perjury] as provided in
3 28 U.S.C. § 1746.”); *In re Rolland*, 317 B.R. 402, 414 (Bankr. C.D. Cal. 2004)
4 (“Schedules and statements are signed under penalty of perjury.”), *citing*, Federal
5 Rule of Bankruptcy Procedure 1008; *see also*, 4 Resnick and Sommer, *Collier on*
6 *Bankruptcy*, ¶ 521.03[2] at 521-14 and n. 16 (“The debtor has a duty to prepare
7 schedules carefully, completely and accurately.”), *citing*, *Cusano v. Klein*, 264 F.3d
8 936 (9th Cir. 2001). Debtor’s debt to Creditor for the prepetition loan should have
9 been disclosed, and Creditor should have been identified, on Debtor’s Schedule F,
10 Creditors Holding Unsecured Nonpriority Claims. Petition, Schedule F, ECF 1. On
11 his original Schedule F filed with his bankruptcy petition, Debtor did not list any
12 debts or creditors holding unsecured nonpriority claims, leaving the schedule blank.
13 *Id.* Debtor later filed an amendment to the list of creditors to add secured creditor
14 Morgan Stanley to the list of creditors and also filed an amended Schedule F, listing
15 29 other creditors holding unsecured nonpriority claims, including lenders, but
16 Debtor did not list Creditor as one of them. Amendment to List of Creditors, ECF
17 16, filed on August 30, 2011; Amended Schedules, ECF 17, filed on September 28,
18 2011. There is no reasonable explanation why Debtor did not list Creditor and the
19 debt he owed to Creditor on his bankruptcy schedules as was his legal duty. From
20 these circumstances, the court infers that Debtor intentionally omitted Creditor from
21 his bankruptcy schedules because he wanted to continue to pay his prepetition loan
22 debt to Creditor postpetition, which is evidence that some, if not all, of the
23 postpetition payments made on the prepetition loan debt to Creditor were voluntary
24 payments. Moreover, Debtor admits that Creditor had no knowledge of this
25 bankruptcy case and Debtor’s discharge until Debtor filed his Notice of Stay of
26 Proceedings in September 2015. While Creditor did not know of the bankruptcy
27 case and discharge, Debtor knew of the bankruptcy case and discharge as he

1 signed the bankruptcy petition, filed the bankruptcy case, and received notice of the
2 discharge when the court entered the discharge, but when these events occurred,
3 Debtor chose not to share his knowledge with Creditor during the time that he made
4 the payments on the prepetition loan debt he owed to Creditor as evidenced by
5 copies of the payment checks constituting Exhibit 2 to Debtor's First Amended
6 Motion, which showed that the payment checks were dated in 2012 and negotiated
7 in 2013. In his trial testimony, Debtor contends that he made a mistake in making
8 payments on a discharged debt: "I have been making payments after the discharge
9 of my bankruptcy because I did not understand that even if I did not list the Loan it
10 was discharged so long as it was a pre-petition debt." Declaration of John J. Suh at
11 2, Debtor's First Amended Motion. Debtor's repayment of a discharged debt based
12 on a mistaken belief formed independently of action by Creditor that the debt was
13 still owing does not negate the voluntary nature of Debtor's repayment of the
14 discharged debt under 11 U.S.C. § 524(f). *In re Hudson*, 168 B.R. at 371-372. The
15 court in *In re Hudson* held as much because the debtors in that case similarly
16 repaid a discharged debt based on the mistaken belief that they thought the debt
17 was still owing without any inducement or other collection action by the creditor. *Id.*
18 at 371-373.

- 19 9. In this case, the court finds that there was no inducement or other collection action
20 by Creditor until he filed the State Court Action in 2015 to demonstrate that Debtor's
21 repayments made in 2012 and 2013 were involuntary and further finds that these
22 repayments were voluntary for purposes of 11 U.S.C. § 524(f). Debtor in his trial
23 testimony made statements that Creditor undertook collection action to coerce
24 payments of the debt from him (i.e., Creditor "has been collecting payments for the
25 loan after the discharge of my Bankruptcy, quite forcefully against my will").
26 Declaration of John J. Suh at 1-2, Debtor's First Amended Motion. The court gives
27 no credence to Debtor's contentions in his trial testimony that Creditor undertook

1 coercive collection against him to render his debt repayments in 2012 and 2013
2 involuntary because the testimony lacked any detail regarding specific incidents of
3 coercion or harassment and is uncorroborated by the testimony of any other
4 witness or any documentary evidence, and the totality of the circumstances indicate
5 otherwise, particularly, Debtor's intentional omission of Creditor and the loan debt
6 from his bankruptcy schedules in violation of his duty to disclose fully, accurately
7 and completely his financial affairs, including his debts and creditors. *See, In re*
8 *Rolland*, 317 B.R. 402, 413 ("Full and comprehensive disclosure is critical to the
9 integrity of the bankruptcy process.")(citation omitted). Accordingly, based on the
10 totality of the circumstances and for the reasons previously discussed, the court
11 finds that the postpetition payments made by Debtor to Creditor on the discharged
12 loan were voluntary.

13 10. Regarding Debtor's request that the court find Creditor in civil contempt, the court
14 begins with 11 U.S.C. § 524(a), which provides in pertinent part:

15 A discharge in a case under this title—(1) voids any judgment at any
16 time obtained, to the extent that such judgment is a determination of
17 the personal liability of the debtor with respect to any debt discharged
18 under section 727, 944, 1141, 1228, or 1328 of this title, whether or not
19 discharge of such debt is waived; (2) operates as an injunction against
the commencement or continuation of an action, the employment of
process, or an act to collect, recover or offset any such debt as a
personal liability of the debtor, whether or not discharge of such debt is
waived. . . .

20 11. The discharge injunction pursuant to 11 U.S.C. § 524(a) may be enforced by the
21 court's contempt power under 11 U.S.C. § 105(a). *In re Bennett*, 298 F.3d 1059,
22 1069 (9th Cir. 2002) (citations omitted).

23 12. The standard for finding a party in civil contempt is as follows:

24 The moving party has the burden of showing by clear and convincing
25 evidence that the contemnor violated a specific and definite order of
26 the court. The burden then shifts to the contemnors to demonstrate
27 why they were unable to comply. . . . [T]o justify sanctions, the movant
must prove that the creditor (1) knew the discharge injunction was
applicable and (2) intended the actions which violated the injunction.

In re Bennett, 298 F.3d at 1069 (citations omitted).

13. In this contested matter for civil contempt, Debtor as the moving party has the burden of showing by clear and convincing evidence that Creditor knew that the discharge injunction was applicable and intended the actions that violated the discharge injunction.
14. Based on the evidence admitted at trial, the court finds that Debtor has not met his burden of proving a claim under 11 U.S.C. § 524(a)(2) as to the time period before Debtor filed the Notice of Stay of Proceedings in the State Court Action on September 17, 2015 because Debtor has not shown by clear and convincing evidence that Creditor and his attorney knew the discharge injunction was applicable before that date and that Creditor intended the actions that violated the discharge injunction.
15. In this regard, the court does not find Debtor's testimony that Creditor and his attorney knew that the discharge injunction was applicable before they filed the State Court Action to collect the debt owed by Debtor to Creditor for the prepetition loan and before Debtor filed the Notice of Stay of Proceedings in that case to be credible. First, Debtor admitted in his First Amended Motion for contempt that Creditor did not learn of the bankruptcy case and discharge until Debtor filed the Notice of Stay on September 17, 2015. Second, Debtor did not list Creditor or the loan debt on his bankruptcy petition and schedules filed in this bankruptcy case, which indicates that notice of the bankruptcy case and discharge was not given to Creditor and supports Creditor's contention that he did not know of the bankruptcy case and discharge. Third, Debtor's testimony that he told Creditor of his bankruptcy case and discharge before the filing of the Notice of Stay of Proceedings in the State Court Action is not corroborated by other evidence, such as other documents or testimony of other witnesses, and the court, having heard Debtor's testimony not corroborated by other evidence, does not find Debtor's testimony on this point to be credible.

16. Based on the evidence admitted at trial, the court finds that Debtor has met his burden of proving a claim under 11 U.S.C. § 524(a)(2) as to the time period after Debtor filed the Notice of Stay of Proceedings in the State Court Action on September 17, 2015 because Debtor has shown by clear and convincing evidence that Creditor and his attorney knew the discharge injunction was applicable once Debtor filed the Notice of Stay of Proceedings and that they intended the actions that violated the discharge injunction. Although the first page of the Notice of Stay of Proceedings incorrectly alleged that the State Court Action should be stayed because of the automatic stay, which is incorrect as a matter of law because the automatic stay terminated when the discharge was entered in Debtor's bankruptcy case, 11 U.S.C. § 362(c)(2)(C), the court determines that Creditor and his attorney knew the discharge injunction was applicable on or around September 17, 2015 because attached to the Notice of Stay of Proceedings was a copy of the Discharge of Debtor. Specifically, the court finds that the acts of Creditor and Creditor's Counsel of filing the request for entry of default against Debtor in the State Court Action on January 8, 2016 and related proceedings resulted in the entry of default against Debtor in the State Court Action listed on the State Court Action case docket, Exhibit 10 to Debtor's First Amended Motion, were intentional acts that violated the discharge injunction under 11 U.S.C. § 524(a)(2) because the filing of the request for entry of default and related acts to perfect the entry of default against Debtor in the State Court Action constituted the continuation of acts to collect a discharged debt as a personal liability of Debtor. Once Creditor and Creditor's Counsel had notice of the bankruptcy case and discharge as of September 17, 2015, they had to cease any further efforts to collect the discharged prepetition loan debt, or otherwise, they would be in contempt of court for violating the discharge injunction. Accordingly, the court finds that Creditor and Creditor's Counsel are in civil contempt in violation of the discharge injunction in this case for the actions described herein.

17. The bankruptcy court is authorized to issue “any order, process, or judgment” necessary or appropriate to carry out the provisions of the Bankruptcy Code under 11 U.S.C. 105(a), such as the discharge injunction under 11 U.S.C. § 524(a)(2). Thus, it is appropriate to issue an order granting Debtor declaratory relief that further actions to collect the remaining portions of the discharged prepetition loan debt owed by Debtor to Creditor are enjoined pursuant to the discharge injunction under 11 U.S.C. § 524(a)(2) and injunctive relief directing Creditor to dismiss the State Court Action against Debtor to collect the discharged prepetition loan debt.

18. Counsel for Debtor, through Debtor’s First Amended Motion, also requests attorney’s fees and costs for the work Counsel for Debtor incurred after filing the Notice of Stay of Proceedings on September 17, 2015 in the State Court Action. Since the bankruptcy court is authorized to issue “any order, process, or judgment” necessary or appropriate to carry out the provisions of the Bankruptcy Code under 11 U.S.C. 105(a), the court may order the creditor to pay the aggrieved debtor compensatory damages, plus attorneys’ fees and costs, as sanctions for violating the discharge injunction under 11 U.S.C. § 524(a)(2). 4 March, Ahart and Shapiro, *California Practice Guide: Bankruptcy*, ¶ 22:112 at 22-15 (2015), *citing*, *Walls v. Wells Fargo Bank, N.A.*, 276 F.3d 502, 507 (9th Cir. 2002) and *Sciarrino v. Mendoza*, 201 B.R. 541, 547 (E.D. Cal. 1996) (bankruptcy court’s award of attorneys’ fees and costs for discharge injunction violation affirmed).

19. Nevertheless, any award of attorneys’ fees and costs here would be subject to a standard of reasonableness, and to determine that the claimed fees and expenses are reasonable, the court reviewed each and every billing and cost entry set forth in Exhibit 9 of Debtor’s First Amended Motion for the claimed attorneys’ fees and expenses. Debtor claims reimbursement of attorneys’ fees and expenses for services performed by Counsel for Debtor who billed 38.3 hours at \$400.00 an hour for a total of \$15,320.00 and expenses of \$79.50, which add up to a grand total of \$15,399.50. Debtor’s First Amended Motion at 8-10 and Exhibit 9 attached thereto.

20. Having carefully considered Debtor's request for an award of attorneys' fees and costs and the supporting, billing statements submitted by Debtor's Counsel, the court determines that the claimed attorneys' fees and costs are inflated and must be reduced to a reasonable amount.
21. The court addresses the billing and cost entries as follows: (a) 3.2 hours (2.0 hours on 1/11/16 and 1.2 hours on 1/25/16) at \$400.00 per hour for a total of \$1,280.00 is claimed for review of Creditor's Counsel objection re stay based on the discharge in the State Court case, review of the status in the State Court case file and to review the state court's ruling on the stay proceeding notice. Creditor's objection to Debtor's Notice of Stay of Proceedings and review of the status of the state court case should not have taken very long since the pleadings are few in number (i.e., summons and complaint, Debtor's notice of stay of proceedings and Creditor's objection thereto, and Creditor's two requests for entry of default, Exhibit 10 to Debtor's First Amended Motion, State Court Case Docket), not very long and simple in content (i.e., Creditor is suing to collect the loan debt from Debtor, and the state court agreed with Creditor that the stay was lifted from the discharge in the bankruptcy case), including the 6-page objection to the notice of stay (Exhibit 4 to Debtor's First Amended Motion) and the 2-page state court's ruling on the notice of stay of proceedings. The court determines that 1.0 hour at \$400.00 per hour for a total of \$400.00 is the reasonable amount for these tasks. (b) 8.0 hours (1.0 hour on 1/12/16, 4.0 hours on 2/2/16, 1.0 hour on 2/11/16, 2.0 hours on 2/16/16 and 1.0 hour on 3/7/16) at \$400.00 per hour for a total of \$3,200.00 for proceedings relating to work on Debtor's motion to reopen the bankruptcy case, which is a simple task, to request the court to undertake the ministerial task of administratively reopening the case for litigation to proceed, but counsel for Debtor made a simple task into a complex one by integrating the merits of his motion for an order to show cause re: contempt into the motion to dismiss and noticing the motion to reopen for hearing in disregard of the local rules as noted by the court in its order on the motion to open

1 the case, which directed counsel for Debtor to file a remedial response that he has
2 read and understood the local rule on motion to reopen which he did not follow in
3 the first instance. See Order Granting Debtor's Motion to Reopen Chapter 7
4 Bankruptcy Case, ECF 29, filed and entered on March 4, 2016. A motion to reopen
5 is a simple task which requests that the court reopen the case administratively to
6 allow a party, here, Debtor, to proceed with further litigation in the bankruptcy case,
7 which should have taken no more than 2.0 hours here, including reviewing any
8 response thereto and the court's ruling and preparing counsel's remedial
9 declaration. It should not have taken counsel for Debtor 3.0 hours to prepare the
10 motion, 3.0 hours to read and respond to the opposition and 2.0 hours to read the
11 court's ruling and file the remedial declaration, and counsel should not be
12 compensated for doing unnecessary work due to his failure to comply with the local
13 rules. The court will allow 2.0 hours at \$400.00 per hour for a total of \$800.00 as
14 reasonable for these tasks. (c) 3.7 hours (0.4 hour on 3/7/16, 0.6 hour on 3/8/16,
15 1.3 hours on 3/11/16, 0.2 hour on 3/15/16, and 1.2 hours on 3/21/16) for a total of
16 \$1,480.00 claimed for the time spent by counsel for Debtor communicating with
17 counsel for Creditor requesting voluntary dismissal of the State Court case and
18 conferring regarding possible settlement of the dispute re: contempt before
19 proceeding with litigation. The record of communications between counsel indicate
20 exchanges of brief emails, letters and telephone conversations, and the claimed 3.7
21 hours at \$400.00 an hour is unreasonable; based on the court's review, 1.2 hours at
22 \$400.00 per hour for a total of \$480.00 is reasonable for these tasks. (d) 16.1
23 hours (0.6 hour on 3/8/16, 1.0 hour on 3/15/16, 4.0 hours on 3/21/16, 1.0 hour on
24 3/31/16, 1.5 hours on 4/23/16, 1.0 hour on 4/24/16, 4.0 hours on 5/6/16 and 3.0
25 hours on 5/9/16) at \$400.00 per hour for a total of \$6,440 claimed for the time spent
26 by counsel for Debtor in preparing the motion for an order to show cause re:
27 contempt with supporting declarations and memorandum of points and authorities,
appearing at the hearing on the order to show cause and reviewing the court's

1 order to show cause. Debtor's motion for an order to show cause re: contempt
2 was straightforward here because as Debtor admitted in his moving papers,
3 Creditor did not know of the bankruptcy case and discharge until Debtor filed the
4 Notice of Stay of Proceedings in the State Court Action in September 2015, and
5 Debtor need only show that Creditor failed to stop his collection lawsuit once notice
6 of the bankruptcy case and discharge was given and provide evidence of collection
7 by Creditor of the discharged debt. However, counsel for Debtor went beyond this
8 relatively simple and straightforward task to demonstrate that Creditor engaged in
9 aggressive debt collection practices which are not contemptuous since Debtor had
10 not put Creditor on notice of the bankruptcy case and discharge when these alleged
11 transgressions took place. All Debtor needed to provide was evidence of the State
12 Court proceedings and proof of payment of the debts and a brief memorandum of
13 points and authorities regarding the standard for contempt. The claimed 16.1 hours
14 of attorney time for a total of \$6,440.00 is excessive, including 2.5 hours of attorney
15 time to look at minimal bank records consisting of about 20 cancelled checks and
16 1.0 hour to read the court's order to show cause. The court will allow 5.0 hours for
17 motion preparation time and 2.0 hours for court appearance time (a hearing of
18 about 20 minutes on 5/10/16, waiting time in court of 25 minutes and 1.0 hour of
19 travel time), or 7.0 hours at \$400.00 per hour, for a total of \$2,800.00 as
20 reasonable. (e) 5.5 hours (4.0 hours on 5/26/16 and 1.5 hours on 5/31/16) at
21 \$400.00 for a total of \$2,200.00 claimed for the time spent by counsel for Debtor
22 preparing the amended motion for the order to show cause re: contempt. Debtor
23 had to amend the original motion for an order to show cause because it was
24 defective in asserting that Creditor "knew of the discharge injunction from the
25 outset," which was not true, and no proof of payment of discharged debt had been
26 submitted with the original motion. It is unreasonable for Creditor to bear the brunt
27 of correcting these deficiencies which should not have been in the original
pleadings by having him pay for the makeover of Debtor's motion. The court has

1 already made reasonable allowance for the preparation of, and appearance on, the
2 original motion, and the court should only reasonably allow a portion of the claimed
3 amount to correct Debtor's originally deficient motion. The claimed amount of
4 \$2,200.00 for 5.5 hours is unreasonable. The court will allow 2.0 hours at \$400.00
5 per hour as the reasonable amount of attorneys' fees and expenses to be allowed
6 for the amended motion, for a total of \$800.00 as reasonable. (f) The court will also
7 allow 3.0 hours at \$400.00 per hour for a total of \$1,200.00 for the appearance of
8 counsel for Debtor at the final hearing in this contested matter on August 11, 2016
9 (2.0 hours of hearing time and 1.0 hour of travel time), which is not set forth on the
10 billing statement in Exhibit 9 to Debtor's First Amended Motion. Counsel for Debtor
11 expended this time at the hearing and should be reasonably compensated for such
12 time. (g) The court will also allow the claimed expenses of \$79.50 for postage,
13 copying costs and parking for counsel at the first hearing, although no breakdown of
14 these costs are given, but it appears that the amount claimed is reasonable based
15 on the court's review of the pleadings on the docket and having seen counsel at the
16 hearing. The court will also allow the claim for the cost of \$358.00 for the Korean
17 interpreter at trial, Interpreter's Invoice, ECF 47, filed on August 17, 2016, as
18 reasonable because Debtor is not sufficiently fluent in English to have given his
19 testimony in English and needed the assistance of a Korean interpreter to present
his testimony.

20 22. Accordingly, the court determines that under 11 U.S.C. §§ 105(a) and 524(a)(2),
21 Counsel for Debtor should be awarded \$6,917.50 in attorney's fees and costs from
22 Creditor Benjamin Park and Counsel for Creditor, John Oh, jointly and severally.

23 23. Debtor also urges that the court award him additional sanctions against Creditor "to
24 compensate the debtor for the suffering that the Creditor caused over the years
25 through his collection activities against the law, which sum is suggested to be
26 \$20,000." Reply to Opposition to Debtor's Amended Motion for Order to Show
27 Cause, ECF 45, filed on July 29, 2016, at 3. It is unclear to the court whether this

request is for compensatory damages for emotional distress or for punitive damages. Some courts have allowed damages for emotional distress for discharge injunction violations. See, 4 March, Ahart and Shapiro, *California Practice Guide: Bankruptcy*, ¶ 22:113.2 at 22-15, citing, *In re Nebbelink*, 403 B.R. 113, 120-121 (Bankr. D. Md. 2009) (collecting cases). Some courts have made awards of punitive damages as sanctions for violating the discharge injunction while other courts have held punitive damages are legally not awardable as sanctions for violating the discharge injunction. 4 March, Ahart and Shapiro, *California Practice Guide: Bankruptcy*, ¶ 22:114 at 22-15, citing, *In re Breul*, 533 B.R. 782, 797 (Bankr. C.D. Cal. 2015) (awarding punitive damages); *In re Henry*, 266 B.R. 457, 481 (Bankr. C.D. Cal. 2001) (same); *In re Cherry*, 247 B.R. 176, 187 (Bankr. E.D. Va. 2000) (collecting cases but declining to award punitive damages under facts of case); *In re Wagner*, 87 B.R. 612, 619 (Bankr. C.D. Cal. 1988) (not allowing punitive damages); see also, *In re Zartun*, 30 B.R. 543, 546 (9th Cir. BAP 1983) (damages may be awarded ancillary to contempt order “so long as they are not punitive”). Regardless of whether emotional distress damages and punitive damages are legally awardable by this court for contempt in violating the discharge injunction, the court declines to award such additional sanctions to Debtor under the facts of this case. The evidence in this case indicates that Creditor pursued collection activity against Debtor without knowledge of this bankruptcy case because Debtor borrowed the \$50,000 from Creditor prepetition, Debtor did not list Creditor or the loan debt on his bankruptcy petition and schedules, and thus, Creditor never received any notice of the bankruptcy case while it was pending, including the notice of discharge, Debtor agreed to repay the loan debt postpetition without notifying Creditor of the bankruptcy case and discharge, and Debtor never told Creditor of the bankruptcy case and discharge until Creditor filed the State Court Action in 2015, leading Debtor’s counsel to file the Notice of Stay of

1 Proceedings. The court doubts that Debtor felt any emotional distress when he
2 made the postpetition payments of the discharged prepetition loan debt to Creditor
3 because as discussed herein, Debtor's payments were voluntary because he
4 wanted to make the payments. The court acknowledges that Debtor must have felt
5 some distress when Creditor sued him for nonpayment of the outstanding loan debt
6 in the State Court Action, but it is really Debtor's own fault rather than Creditor's if
7 Debtor felt any distress from Creditor's state court lawsuit to collect the loan debt
8 that Debtor reneged in paying since Debtor kept the knowledge of the bankruptcy
9 case and discharge to himself until then. Moreover, the court finds Debtor's
10 testimony that he felt actionable emotional distress warranting compensatory
11 damages not to be credible, and the court's credibility finding is in large part
12 because such testimony is uncorroborated by any other witness, expert or
13 otherwise. Debtor did not call any percipient witnesses to corroborate his claims of
14 creditor harassment, nor did he offer the testimony of any medical expert witness to
15 corroborate his claims of emotional distress. Creditor through counsel had
16 responded to Debtor's Notice of Stay of Proceedings by filing the objection in the
17 state court, and the state court apparently agreed with Creditor by ruling the State
18 Court Action was not stayed and could proceed. While the state court's ruling that
19 the State Court Action to enforce the discharged prepetition loan debt could
20 proceed was erroneous in light of the discharge injunction, the reliance of Creditor
21 and his counsel on the state court's ruling and the fact that they did not get far in
22 the State Court Action only to entry of default with no further collection along with
23 Debtor's long and willful silence about his bankruptcy case and discharge to
24 Creditor mitigate their actions in violation of the discharge injunction such that the
25 requested additional sanctions are not warranted. These circumstances do not
26 warrant the imposition of punitive damages, even if the court had ruled that punitive
27

1 damages may be legally awarded by a bankruptcy court, which is an issue which
2 the court does not decide now.

3 24. Finally, at the trial, the parties stipulated to the court determining any claim for
4 turnover of payments of the loan debt if the court determines that such payments
5 were collected in violation of the discharge injunction. "Awardable compensatory
6 damages [to a bankruptcy debtor] include any payments obtained by the creditor
7 violation of the [discharge] injunction, together with interest thereon." 4 March,
8 Ahart and Shapiro, *California Practice Guide: Bankruptcy*, ¶ 22:113 at 22-15, *citing*,
9 *In re Kendrick*, 75 B.R. 451, 456 (Bankr. N.D. Ga. 1987) and *In re Brantley*, 116
10 B.R. 443, 447-448 (Bankr. D. Md. 1990). The evidence before the court is that
11 Creditor collected payments on the discharged prepetition loan debt as shown by
12 the copies of the cancelled checks showing payments to Creditor in 2012 and 2013
13 after the discharge was entered. The question is whether the payments of the
14 discharged prepetition loan debt were voluntary repayments by Debtor not in
15 violation of the discharge injunction under 11 U.S.C. § 524(f). As discussed above,
16 the court finds that Debtor's postpetition repayments of the discharged prepetition
17 loan debt owed to Creditor as evidenced by the copies of the cancelled checks in
18 Exhibit 2 to Debtor's First Amended Motion, the only evidence of postpetition
19 collection of the loan debt in evidence, were voluntary within the meaning of 11
20 U.S.C. § 524(f), and thus, were not collected in violation of the discharge injunction
21 to warrant turnover as compensatory damages to Debtor. Accordingly, Debtor's
22 request for turnover of his postpetition loan repayments from Creditor should be
23 denied.

24 25. Regarding the granting of declaratory and injunctive relief in favor of Debtor as to
25 further efforts by Creditor to collect the discharged prepetition loan debt and the
26 award of attorneys' fees and costs in favor of Debtor and against Creditor and
27 Counsel for Creditor, Counsel for Debtor is ordered to submit a proposed final order

1 consistent with these findings of fact and conclusions of law, within 14 days of entry
2 of these findings of fact and conclusions of law.

3 26. Regarding the denial of turnover relief, Counsel for Creditor is ordered to submit a
4 proposed final order consistent with these findings of fact and conclusions of law
5 within 14 days of entry of these findings of fact and conclusions of law.

6 **IT IS SO ORDERED.**

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23 Date: December 8, 2016



24 Robert Kwan
25 United States Bankruptcy Judge
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